

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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STACEY PYNN,

Plaintiff,

v.

16-CV-548  
DECISION AND ORDER

MATTHEW P. PYNN,

BURT MARSHALL,

CAROL HENDERSON,

BIANCA GATTO, and

NIAGARA COUNTY,

Defendants.

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On July 5, 2016, the plaintiff commenced this action seeking various relief in connection with the custody of her children and related proceedings in New York State Supreme Court for Niagara County. Docket Item 1. On October 28, 2016, this Court first referred this case to United States Magistrate Judge Jeremiah J. McCarthy for all proceedings under 28 U.S.C. § 636(b)(1)(A). Docket Item 29. Later, on August 6, 2018, this Court referred the case to Judge McCarthy for all proceedings under 28 U.S.C. § 636 (b)(1)(A) and (B). Docket Item 73.

On August 15, 2018, defendants Niagara County, Burt Marshall, Carol Henderson, and Bianca Gatto (“Niagara County defendants”) moved for summary judgment, Docket Item 76; on October 31, 2018, the plaintiff responded, Docket Item 99; and on November 14, 2018, the Niagara County defendants replied, Docket

Item 103. On August 16, 2018, the plaintiff cross-moved for partial summary judgment against the Niagara County defendants, Docket Item 83; on October 31, 2018, the Niagara County defendants responded, Docket Item 98; and on November 14, 2018, the plaintiff replied, Docket Item 102. On January 4, 2019, Judge McCarthy issued a Report and Recommendation ("R&R") finding that the plaintiff's motion should be denied without prejudice to renewal in state court, and that the Niagara County defendants' motion should be granted in part and denied in part. Docket Item 106.<sup>1</sup> The parties did not object to the R&R, and the time to do so now has expired. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2).

A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). A district court must conduct a de novo review of those portions of a magistrate judge's recommendation to which a party objects. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). But neither 28 U.S.C. § 636 nor Federal Rule of Civil Procedure 72 requires a district court to review the recommendation of a magistrate judge to which no objections are raised. See *Thomas v. Arn*, 474 U.S. 140, 149-50 (1985).

Although not required to do so in light of the above, this Court nevertheless has reviewed Judge McCarthy's R&R as well as the parties' submissions to him. Based on that review and the absence of any objections, the Court accepts and adopts Judge McCarthy's recommendation to deny the plaintiff's motion without prejudice to renewal in state court. The Court also accepts and adopts his recommendation to

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<sup>1</sup> Judge McCarthy issued a redacted version of his Report and Recommendation on January 14, 2019. Docket Item 107.

dismiss the plaintiff's claims against all defendants (including Matthew Pynn) for lack of jurisdiction without reaching the merits of her claims.

For the reasons stated above and in the R&R, the plaintiff's motion for partial summary judgment, Docket Item 83, is DENIED; the Niagara County defendants' motion for summary judgment, Docket Item 76, is GRANTED in part and DENIED in part; the complaint, Docket Item 1, is dismissed for lack of subject matter jurisdiction; and the Clerk of the Court shall close the file.

SO ORDERED.

Dated: February 7, 2019  
Buffalo, New York

*s/ Lawrence J. Vilardo*  
LAWRENCE J. VILARDO  
UNITED STATES DISTRICT JUDGE